

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216149

DATE: October 30, 1984

MATTER OF: Cultural Property Advisory Committee -
Members' Travel Expenses

DIGEST:

Members of the Cultural Property Advisory Committee may not be reimbursed for actual subsistence expenses exceeding the maximum amount of \$75 per day, as limited by 5 U.S.C. § 5702(c). The Federal Advisory Committee Act, Public Law 92-463, incorporated by reference in the Advisory Committee's enabling legislation, provides that advisory committee members are to be paid the same travel expenses as authorized under 5 U.S.C. § 5703 for intermittent employees. Under 5 U.S.C. § 5703 and the Federal Travel Regulations, intermittent employees serving as experts or consultants may not be reimbursed for actual subsistence expenses exceeding the maximum rate, absent specific statutory authorization for the payment of a higher rate. We find that no such specific statutory authority is included in the Advisory Committee's enabling legislation.

This decision concerns the payment of travel expenses to members of the Cultural Property Advisory Committee (Advisory Committee), established by the Convention on Cultural Property Implementation Act (Implementation Act), Pub. L. No. 97-446, Title III, § 306, 96 Stat. 2329, 2356 (1983). The issue for our determination is whether members of the Advisory Committee may be reimbursed for actual subsistence expenses which exceed the maximum rate of \$75 per day, as limited by 5 U.S.C. § 5702(c) (1982). We hold that the committee members may not be reimbursed for actual subsistence expenses in excess of the maximum rate expressed in section 5702(c), absent specific statutory authorization for the payment of a higher rate. Section 306(c) of the Implementation Act does not provide such specific authority.

Mr. Woodward Kingman, Associate Director for Management of the United States Information Agency (USIA), requested our decision on this matter. Under

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section 306(e) of the Implementation Act, the Director of USIA is responsible for providing assistance and support services to the Advisory Committee.

BACKGROUND

Section 306 of the Implementation Act established the Advisory Committee, composed of professional and public members, to assist the President in imposing import restrictions on cultural property and on other matters concerning the implementation of the Convention on Cultural Property. In order to carry out its statutory responsibilities, the Advisory Committee meets periodically in Washington, D.C., and in other locations.

The Associate Director for Management of USIA asks whether Advisory Committee members performing official travel may be reimbursed for actual subsistence expenses in excess of the maximum daily rate of \$75 stated in 5 U.S.C. § 5702(c). While he recognizes the normal rule that members of advisory committees traveling on Government business are subject to the provisions of 5 U.S.C. Chapter 57, Subchapter I, the Associate Director suggests that section 306(c) of the Implementation Act creates an exception to those provisions. Section 306(c), discussed below, provides that, "[t]he members of the Committee shall be reimbursed for actual expenses incurred in the performance of duties for the Committee."

OPINION

Reading section 306 of the Implementation Act as a whole, we note that, as pointed out by the Associate Director, section 306(c) authorizes reimbursement for "actual expenses" incurred by Advisory Committee members in the performance of their official duties. However, section 306(h) of the Act further provides that, with certain exceptions not applicable here, the Committee's operations shall be governed by the Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972), 5 U.S.C. Appendix (1982). Section 7(d)(1)(B) of the Federal Advisory Committee Act states that members of advisory committees may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under

5 U.S.C. § 5703 for persons employed intermittently by the Federal Government. Section 5703, in turn, provides that:

"An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at \$1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service." (Emphasis added.)

As indicated by the underscored language in 5 U.S.C. § 5703, individuals eligible for travel and transportation expenses under that section are to be reimbursed such expenses under Chapter 57, Subchapter I of Title 5, United States Code, that is, on the same basis, and subject to the same general limitations, as Government employees traveling on official business. Section 5701(2) of the same subchapter, as amended by the Travel Expense Amendments Act of 1975, Pub. L. No. 94-22, 89 Stat. 84 (1975), defines an "employee" for the purposes of sections 5701 through 5709 as including, "an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis and an individual serving without pay or at \$1 a year." In the Committee report accompanying the Travel Expense Amendments Act of 1975, the House Committee on Government Operations explained that it expanded the definition of the term "employee" to include intermittent employees so that all individuals traveling on Government business would be paid subsistence allowances on the same basis. H. R. Rep. No. 94-104, 94th Cong., 1st sess. 6, 8, reprinted in 1975 U.S. Code Cong. & Ad. News 152, 157, 159.

Paragraph 1-1.2b of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), further specifies that:

"The provisions of this chapter also apply to official travel of individuals employed intermittently in the Government service as consultants or experts and paid on a daily when-actually-employed (WAE) basis and of

individuals serving without pay or at \$1 a year. These individuals are not considered to have a 'permanent duty station' within the general meaning of that term; however, they may be allowed travel or transportation expenses under this chapter while traveling on official business for the Government away from their homes or regular places of business and while at places of Government employment or service. Maximum rates prescribed herein are applicable unless a higher rate is specifically authorized in an appropriation or other statute." (Emphasis added.)

The maximum rate for actual subsistence expenses of official travel currently is set at \$75 per day by 5 U.S.C. § 5702(c), which authorizes reimbursement of such expenses in lieu of a per diem allowance. See FTR para. 1-8.2.

Neither section 306(c) of the Implementation Act, nor any other provision of that Act, expressly authorizes the payment of actual subsistence expenses of travel at a rate higher than the maximum daily rate prescribed in 5 U.S.C. § 5702(c). Accordingly, in the absence of specific statutory authorization for the payment of actual subsistence expenses of travel at a higher rate, the Cultural Property Advisory Committee members may not be reimbursed for those expenses which exceed the maximum amount of \$75 per day.

The Associate Director, however, suggests that section 306(c) of the Implementation Act creates an exception to the normal travel expense rules. He states that the specific statutory provision in section 306(c) prevails over the more general travel provisions incorporated by reference in section 306(h). Accordingly, he contends that the general limitations otherwise applicable to persons traveling on official Government business would not apply to members of the Cultural Property Advisory Committee; rather, the Advisory Committee members would be entitled to reimbursement of their actual expenses so long as the expenses are reasonable in amount and character and allocable to official duties.

We do not agree with the Associate Director's contention. While section 306(c) provides for the payment of "actual expenses" incurred by Advisory Committee members, the term "actual expenses" is not defined in the statute or in the legislative history of the Implementation Act. The term "actual expenses" does not necessarily connote actual subsistence expenses of travel, as is suggested by the Associate Director, but may be construed broadly to include other types of expenses incurred by an Advisory Committee member in the performance of official duties. Thus, section 306(c) does not by its terms negate application of the travel expense rules incorporated by reference in section 306(h) of the Implementation Act.

Furthermore, we note that nothing in the legislative history of the Implementation Act indicates that Congress intended to exempt the members of this Advisory Committee from the statutory limitations on travel expenses that apply to members of all other advisory committees. In fact, the legislative history of the Implementation Act reveals that Congress enacted section 306(h) of the Act in order to ensure that, "in operation the Advisory Committee will conform to the strictures of the Federal Advisory Committee Act * * *." S. Rep. No. 97-564, 97th Cong., 2d sess. 30, reprinted in 1982 U.S. Code Cong. & Ad. News 4078, 4107. As discussed above, one of the strictures contained in the Federal Advisory Committee Act is that advisory committee members are to be paid travel allowances on the basis provided in 5 U.S.C. § 5703.

Finally, we note that our interpretation of sections 306(c) and 306(h) of the Implementation Act is supported by a long-standing principle of statutory construction. That principle holds that general and specific statutory provisions concerning the same subject matter should be construed harmoniously, if such a construction is possible. C. SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 51.05 (4th ed. 1972).

Accordingly, we conclude that section 306(c) of the Implementation Act does not create an exception to section 306(h) of that Act, which incorporates by reference the travel expense provisions of the Federal Advisory Committee Act. Therefore, the members of the Cultural Property

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Advisory Committee may not be reimbursed for actual subsistence expenses exceeding the maximum daily rate of \$75 set forth in 5 U.S.C. § 5702(c).

Whitton J. Fowler
for Comptroller General
of the United States